IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 329 of 1998
With
FIRST APPEAL No. 330 of 1998
To
FIRST APPEAL No. 334 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO LTD - Appellant(s)
Versus
CHAUHAN JAGDISHBHAI RAMJIBHAI & 4 - Defendant(s)

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Appearance :
MR AJAY R MEHTA for Appellant(s) : 1,
MR VC DESAI for Defendant(s) : 1 - 2.
MR PK PAREKH for Defendant(s) : 1,
MR SURESH M SHAH for Defendant(s) : 3 - 4.
None for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/06/2007

ORAL JUDGMENT

1. All the First Appeals arise against the common judgement and award passed by the Tribunal in MACP Nos.125 of 1997, 126 of 1997, 128 of 1997, 129 of 1997 and 130 of 1997, whereby the Tribunal has awarded the compensation to the respective claimants on account of the accident, which was the basis of the claim petitions.

2. Heard Mr.Parikh, learned Counsel for Mr.Mehta, learned Counsel for the appellant, Mr.Shah, learned Counsel for the Original Claimants in First Appeal Nos.329 and 330 of 1998 and Mr.Desai, learned Counsel on behalf of the owner and the driver of the vehicle in all the First Appeals.

3. The only contention raised on behalf of the appellant in the present appeals is that the Tribunal could not have fastened the liability to the Insurance Company, when the vehicle was transferred by the owner to the third party. He submitted that the date of accident is 21.1.1997 and prior that to, the vehicle was transferred by the registered owner to third party and, therefore, the Tribunal has committed error in

passing the award against the Insurance Company and hence, the award passed by the Tribunal deserves to be quashed and set aside.

4. On behalf of the original claimant as well as the driver and owner of the vehicle, it has been contended that as such no such contention was raised before the Tribunal by the Insurance Company and it has been further submitted that even if such contention is to be permitted, then also the matter is governed by the decision of the Apex Court in case of **"United India Insurance Company Limited, Shimla Vs. Tilak Singh & Ors.", reported in AIR 2006 SC, 1576** and more particularly in view of the provisions of Section 157 of the Motor Vehicles Act (hereinafter referred to as "the Act"). It has been submitted that as the law is settled by the Apex Court, the contention cannot be accepted and the appeals deserve to be dismissed.

5. It deserves to be recorded that in the decision of the Apex Court in the case of **"United India Insurance Company Limited, Shimla** (supra), the Apex Court, examining the very contention, has,

inter alia, observed at para 13 as under:-

> “13. Thus, in our view, the situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether under Section 103-A of the 1939 Act or under Section 157 of the 1988 Act in so far as the liability towards a third party is concerned. Thus, whether the old Act applies to the facts before us, or the new Act applies, as far as the deceased third party was concerned, the result would not be different. Hence, the contention of the appellant on the second issue must fail, either way, making a decision on the first contention unnecessary, for deciding the second issue. However, it may be necessary to decide which Act applies for deciding the third contention. In our view, it is not the transfer of the vehicle but the accident which furnishes the cause of action for the application before the tribunal.”

6. It may be record that in the said decision, the Apex Court relied upon its earlier decision in case of **"Rikhi Ram and another v. Sukhrania (Smt.) and others", reported in 2003 SCC, 97** and also upon its another decision in case of **"G.Govindan v. New India Assurance Co. Ltd. And others", reported in 1993 (3) SCC, 754**, holding that the liability of the insurer does not cease even if the owner or the purchaser fails to give intimation of transfer to the insurance company, as the purpose of the legislation was to protect the rights and interests of the third party.

7. In view of the law laid down by the Apex Court, the contention of the appellants for avoiding or repudiating the liability cannot be accepted on the mere ground that there was no intimation to the Insurance Company or that the transfer was not effected with the concerned authority.

8. No other contention is raised. Therefore, all the appeals deserve to be dismissed and hence, dismissed. No order as to costs. Record and proceedings be returned to the Tribunal.

11.6.2007 **(Jayant Patel, J.)**

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